IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 921 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RASHIKLAL BABULL VANAND - Applicant(s)
Versus
STATE OF GUJARAT & 6 - Respondent(s)

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Appearance :
MR LR PATHAN for Applicant(s) : 1,
MR KT DAVE APP for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2, 6,
NOTICE SERVED for Respondent(s) : 3 - 5, 7,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner has prayed for appropriate writ, direction or order quashing and setting aside order of learned J.M.F.C., Balasinor dated 6.7.2002 with respect to the C.R. No. I-83 of 1999 and to confirm the order passed by the learned Additional Sessions Judge, Anand in Criminal Revision Application No.8 of 2003.

2. The petitioner - original complainant filed complaint against the respondents No.2 to 7 for the offences punishable under Sections 326, 323, 452, 397, 378 and 506 of Indian Penal Code being C.R. No. I-83 of 1999 and after investigation, as per NC report of the concerned Investigating Officer, it appears that though opportunity was given to the petitioner, original complainant to submit his objection, the petitioner did not submit his objection and therefore, by an order dated 29.7.2002, the right of the petitioner to submit his objection came to be closed and thereafter, considering the police report, the learned J.M.F.C., Balasinor by his judgment and order dated 6.7.2002, dismissed the complaint. Being aggrieved and dissatisfied with the order passed by the learned J.M.F.C., Balasinor dated 6.7.2002, the petitioner preferred Criminal Revision Application NO.8 of 2003, which came to be dismissed by the learned Additional Sessions Judge, Camp at Anand by his judgment and order dated 7.5.2004. Being aggrieved and dissatisfied with the said

judgment and order, the petitioner is constrained to prefer this petition under Article 227 of the Constitution of India.

2. Mr. Pathan, learned advocate appearing on behalf of the petitioner has vehemently submitted that both the Courts below have committed error in dismissing the complaint and / or accepting the report and even the right of the petitioner to submit objections also came to be closed illegally and all of sudden, the said order came to be passed by the learned J.M.F.C., Balasinor. Therefore, it is requested to allow present application.

3. Mr. K.T. Dave, learned A.P.P. while opposing the present application, has submitted that as observed by both the Courts below, reasonable opportunity was given to the petitioner to submit his objections to the report submitted by the Investigating Officer, still, the petitioner did not submit any objections. Under the circumstances, the learned J.M.F.C., Balasinor was justified in closing the right of the petitioner to submit objections and rightly dismissed the complaint by both the Courts below. It is submitted that there is no jurisdictional error much less an error of law committed by any of the Courts below, which requires to be interfered with by this Court in exercise of powers under Article 227 of the Constitution of India.

4. Heard the learned advocates appearing for the respective parties. It appears from the record that after the investigation, the concerned Investigating Officer has submitted NC summary report and learned J.M.F.C., Balasinor issued notice to the petitioner on 10.1.2001 by an order dated 8.12.2000 and on that day, the petitioner appeared before the learned J.M.F.C., Balasinor and prayed for time to submit objections, which was granted by the learned J.M.F.C., Balasinor. Thereafter, the petitioner has been given sufficient opportunity and the matter has been adjourned time and again at the instance of the petitioner, still the petitioner did not submit his objections. Under the circumstances, by an order dated 6.7.2002, the learned J.M.F.C., Balasinor closed the right of the petitioner to submit objections and thereafter, considering the report of the Investigating Officer and supporting documents, the learned J.M.F.C., Balasinor dismissed the complaint by accepting the Summary report submitted by the Investigating Officer. After reasonable opportunity, still the petitioner did not submit his objections, and therefore, the learned Magistrate was justified in closing the right of the petitioner to submit objections against the report of the Investigating Officer. The Court is not required to wait for indefinite period. Under the circumstances and considering the above, when the learned J.M.F.C., Balasinor accepted the report considering Investigation papers, summary report etc. and the complaint came to be dismissed and when the said

order is confirmed by the Revisional Authority, it can not be said that the Courts below have committed any error or any illegality, which requires any interference of this Court under Article 227 of the Constitution of India. As rightly submitted by learned A.P.P. Mr. K.T. Dave that there is no jurisdictional error much less an error of law committed by any of the Courts below, which requires to be interfered with by this Court under Article 227 of the Constitution of India.

5. Under the circumstances, there is no sum and substance in the petition and hence, the petition is dismissed. Rule is discharged.

(M.R. SHAH, J.)

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